IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7285 OF 2005

K.K. Mistrty & ors. ... Petitioners

V/s

Sureshchandra S. Agarwal & ors. ... Respondents

Ms. Geeta Shastri i/by M/s. Khilnani & Co. for the petitioners.

Mr. N.B. Shah holding for H.V. Chande for the respondent Nos. 1 to 4.

CORAM: P.V. KAKADE, J.

DATED: 27TH FEBRUARY, 2006

P.C.:

1. Heard learned counsel for both sides.

2. The petition is moved against the order dated 10.8.2005 passed by the lower appellate Court for vacating the room in Revision Application No. 107 of of 2005 in Interim Notice No. 3650 of 2003 in R.A.E. & R. Suit No. 324/786 of 1991 confirming the order passed by the Trial Court dated 23.2.2005 discharging the Interim Notice No. 365 of 2003 in the said suit.

3. Petitioners are defendant Nos. 6, 7 & 8 who had taken out notice of condonation of delay in filing the written statement. The suit in question is filed seeking the decree of eviction. In the notice, it was the case of the defendants 6, 7 & 8 that deponent was served with the modified copy of the plaint. After service of the amended copy of the plaint, they engaged one Mr.S.C. Kotwani, advocate to represent the defendants. Vakalatnama was signed in favour of defendants by Mr.S.C. Kotwani and contact number of the defendants was given to him with request to communicate the defendants the progress of the matter. After some time defendants came to know that Mr. Kotwani had expired and thereafter in the month of May, 2003 one advocate Mr. P.C. Shah was engaged who told the defendants that written statement was not filed by said Mr. Kotwani and the matter was kept for ex-parte hearing. Advocate Mr. Shah thereafter requested the Court for adjournment for filing the written statement. As Mr. Shah was practicing in criminal side, he requested one Mr. Khilnani to prepare written statement and file Vakalatnama. The written statement was prepared on 30.6.2003 but it was not taken on record because the matter was kept for ex-parte order and hence

the notice came to be modified.

4. The learned Trial judge, after hearing both parties came to the conclusion that defendants 6, 7 & 8 have made out a case for granting them leave to file the written statement and notice came to be discharged with cost.

5. Revision was preferred. The lower appellate Court, after hearing both parties came to the conclousion that there was no sufficient cause which prevented the defendants to file written statement before the Trial Court by condoning the delay as per law. It was further held that said defendants were not entitled to set aside the order for placing the matter for ex-parte hearing and thereafter allowing them to file the written statement as per law and finally Rule came to be discharged. Hence the present petition is filed.

6. At the outset, it may be noted that the lower aoppellate Court is of the view that there was no sufficient ground to set aside the order dated 3.7.2003 allowing the petitioners/defendants 6, 7 & 8 to file written statement. It was held that, it was pertinent to note that the amended plaint was served upon the

defendants on 19.8.2000 and the application for seeking the relief of filing the written statement was taken on record on 6.8.2003 i.e. almost after three years and it was, therefore, held that the said period was not properly explained and, therefore, petitioners cannot be given any lattitude for want of sufficient cause.

7. In my considered view, the concurrent findings recorded by both the Courts below are seen to be just, legal and proper. The learned counsel for the petitioners/defendants 6, 7 & 8 submitted that the interest of justice would demand that the petition is allowed and the time bound programme for progress of the suit should be directed to be adhered. However, as can be seen from the record, there is absolutely no material on record to show that the discretionary relief could be granted to the petitioners in the matter which is pending since the year 1991 and the defendants were served at that time and thereafter were again served with the copy of the amended plaint in the year 2000 and still they did not take any steps till filing of the application dated 6.8.2003.

8. Under the circumstances, I do not see any reason to interfere with the orders passed by the lower Courts and

hence I hold that the petition is devoid of any merits and stands dismissed with no order as to costs.

.....